IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

MONDAY, THE SEVENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

PRESENT

and
HON'BLE SRI JUSTICE M.NARAYANA REDDY

WRIT APPEAL NO.157 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 27/01/2005 in W.P.No.22267 OF 2004 on the file of the High Court.)

Between:

1 Valusa Madhusudhan, S/o. Rajaveeru,
Plot No. 84, Suthanabad Village and Mandal,
Karimnagar.
2 P. Vaikunta Pathi, S/o. rangaiah,
Plot No. 25 & 26 Suthanabad Village and Mandal,
Karimnagar.
3 Purella Laxminarayana, S/o. dMallaiah,
Plot No. 87 Suthanabad Village and Mandal,
Karimnagar.
4 K. Satyanarayana, S/o. Jakkaiah,
Plot No. 95 Suthanabad Village and Mandal,
Karimnagar.
5 M.A. Ghani, S/o. Shaik Mahammed,
Plot No. 29, Suthanabad Village and Mandal,
Karimnagar.

..... APPELLANT(S)

AND

1 District Collector, Karimnagar District at Karimnagar.
2 District Panchayat Officer, karimnagar District at Karimnagar.
3 Gram Panchayat, Sulthanabad, rep. by its Sarpanch,
Sulthanabad Village and Mandal, Karimnagar District.

.....RESPONDENTS

Counsel for the Appellant : Sri V.VENKATARAMANA

Counsel for Respondent Nos.1 & 2: GP FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for the Respondent No.3: Sri Y.Rama Rao

The Court made the following :

ORAL JUDGMENT: (Per Hon'ble the Chief Justice)

Nineteen persons, who have been carrying on petty businesses in a piece of land situate in Rajiv Market, Old Bus Stand, Sulthanabad village and mandal, Karimnagar district, bearing Plot Nos.25, 26, 76, 86, 93, 95, 84, 24, 80, 78, 81, 89, 85, 82, 90, 87, 95, 29, and 79, filed the writ petition seeking direction against respondents to consider their prayer for alienation in respect of particular piece of land in their occupation and to declare the action of respondent in not issuing prior notice before evicting them, as illegal and violative of principles of natural justice. Learned single Judge dismissed the writ petition as without any merit. Only five out of the writ petitioners – appellants have chosen to file this appeal. Grievance of the appellants is that they have been in occupation of small parcel of land by erecting sheds thereon and carrying on petty business for the last more than 35 years. Place of business is known as Rajiv Market, Old Bus Stand, Sulthanabad village and mandal, Karimnagar district. The Gram Panchayat, Sulthanabad, had issued occupancy certificates to them and the lease amount was being collected by Gram Panchayat, Sultananbad, and they had made representations on 13th July, 2001 with prayer to alienate the parcel of land in their occupation and expressed their willingness to purchase the same. While the said representation was under consideration, after fresh election, the present Sarpanch, who is inimical towards the petitioners – appellants got a resolution passed by the Gram Panchayat to evict the writ petitioners in the garb of construction of a shopping complex and thus, the petitioners apprehend that the Gram Panchayat is taking steps for their eviction from the plots in their occupation. Petitioners made representation on 30th November, 2004 again reiterating their prayer for alienation.

Learned single Judge after taking note of the stand taken by respondent No.3 in its

counter-affidavit alleging that a Resolution was passed by the Gram Panchayat on 11th November, 2004 for construction of shopping complex and the District Collector, Karimnagar, vide proceedings dated 04th December, 2004 had sanctioned funds for construction of Shopping Complex, rejected the prayer of petitioners seeking alienation of the area, which has been under their occupation. It is also stated that a meeting was convened for construction of Shopping Complex for carrying on business and in that meeting, all writ petitioners, except one of them, had given consent for construction of Shopping Complex and agreed to pay Rs.40,000/- in two instalments to enable the Gram Panchayat for construction of business complex. It is also stated that again on 23rd November, 2004, further meeting of the vendors was called for and it was agreed that since six months' time was likely to be taken to complete the construction and allotment, alternative site, behind the office of Gram Panchayat and adjacent to the wall of the Government College from the wall of the Post Office to the road leading to the Deputy Executive Engineer's office, was temporarily allotted to the petty businessmen. Thus, in view of the two meetings and the consent of the vendors, there is no ground to entertain the writ petition.

Learned single Judge taking note of the Gram Panchayat finding it to be in the interests of vendors held that there has been no right for alienation and proceeded to dismiss the writ petition further observing that petitioners alone are not being affected, and others are also being affected and any interjection would cause prejudice to those who have given consent for construction of the building complex.

Learned counsel for the appellants – petitioners has drawn our attention to G.O.Ms.No.53 P.R. dated 02nd February, 1966 and submits that it is only with prior sanction of the District Collector that Gram Panchayat can alienate the land belonging to it, and since requisition for alienation is already pending with the Collector and until the Collector

takes decision, the appellants cannot be evicted and moreover, Resolutions of the Gram Panchayat are liable for scrutiny by the Government under Section 246 of Andhra Pradesh Panchayat Raj Act, 1994, or by the District Collector, who is empowered to suspend the resolution of the Gram Panchayat.

It is a fact that appellants are those vendors who are carrying on petty businesses for quite some time and majority of them have already agreed for the completion of raising the construction of building complex and agreeing to take shops in the new complex to be raised. Learned counsel for the respondent – Gram Panchayat states that 19 of the vendors have already vacated from the area in question, and out of the five appellants before us, four are already signatories to the proceedings of the meetings held on 11th November, 2004 and 23rd November, 2004 agreeing for construction to be raised for shopping complex. Only appellant No.2 is not a signatory, who is said to be a former Sarpanch. So long as there has been no order passed by the District Collector granting permission to the Gram Panchayat to alienate the land, alienation of the area cannot be sought by the petitioners as of right. Unless there is recommendation by the Gram Panchayat to alienate or sell the land, there cannot be any such order by the District Collector. Before alienation could take place, the Gram Panchayat had passed a Resolution not to alienate the land and to raise thereupon construction of shopping complex, to which majority of the vendors had agreed. Thus, the petitioners – appellants cannot insist for alienation. So far, the District Collector has neither suspended nor cancelled the resolution of the Gram Panchayat. Therefore, insofar as the prayer in the writ petition is concerned, there cannot be any scope for interference with the order of learned single Judge. Of course, each of the vendors, who has agreed for the proposed construction of complex by the Gram Panchayat have to abide by the terms and conditions thereof, and they alone have to be given preference in the new shopping complex to be constructed. Those who have not agreed to the proposal, may not be bound and there will not be any equity in favour of them for any consideration, but,

we make it clear that dismissal of the writ petition will not prevent them from taking recourse to such proceedings permissible in law or in approaching the District Collector concerned for cancellation of the Resolutions, if they have any right to do so. But, in these proceedings, no direction can be issued as sought for by the appellants – petitioners. Of course, appellant No.2, not being a party to the two meetings held on 11th November, 2004 and

23rd November, 2004, if in occupation of the area in question, cannot be dispossessed otherwise than in due course of law by the Gram Panchayat, Sulthanabad.

Accordingly, we dispose of writ appeal by slightly modifying the order passed by the learned single Judge to the extent that insofar as appellant No.2 is concerned, he cannot be dispossessed otherwise than in due course of law. It will be open to the Gram Panchayat, Sulthanabad, to take out appropriate proceedings for his eviction.

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DEVINDER GUPTA, C.J.

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M.NARAYANA REDDY, J.

07-02-2005

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.....REGISTRAR

To

1 District Collector, Karimnagar District at Karimnagar.
2 District Panchayat Officer, karimnagar District at Karimnagar.

3 The Sarpanch, Gram Panchayat, Sulthanabad,
Sulthanabad Village and Mandal, Karimnagar District.

4. 2 CCs to Govt. Pleader for Panchayat Raj and rural Development,

High Court buildings, Hyderabad (OUT)

5. 2 CCs to Mr. Y.Rama Rao, Advocate (OUT)

6. 2 CD copies

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